

# ESKO LTD — TERMS OF TRADE

1. Definitions: The following definitions apply, unless otherwise specified:
  - a) "Customer" means the person or entity purchasing goods under these Terms.
  - b) "Esko" means Esko Limited, the supplier of goods under these Terms.
  - c) "Terms" means these Terms of Trade.
2. Acceptance of Terms: These Terms apply to all contracts for the supply of goods to the Customer. Any order received by Esko from the Customer for the supply of goods will constitute acceptance of these Terms.
3. Orders:
  - a) Esko may in relation to any order accept the order or decline to accept the order in whole or in part, at Esko's discretion.
  - b) No contract between Esko and the Customer will be formed until Esko has sent a written order confirmation.
  - c) Orders are accepted subject to Esko's ability to supply the goods.
  - d) The goods will be supplied in the minimum units and multiples stated in Esko's price list. If orders are received for quantities other than these, Esko reserves the right to adjust order quantities accordingly or to apply a surcharge for lesser quantities, at Esko's discretion (any applicable surcharge will be notified to the customer in advance).
  - e) No order which has been accepted by Esko may be cancelled by the Customer except with Esko's agreement in writing, or by law.
  - f) The Customer shall fully indemnify and hold Esko harmless against all costs (including the cost of all freight, labour and materials used), damages, charges and expenses incurred by Esko as a result of cancellation (except to the extent the cancellation was caused by Esko's breach).
4. Price variations: Esko reserves the right to vary its selling prices at any time without notice to the Customer. Any varied selling price will apply to any order made by the Customer after the date of the variation.
5. Recommended retail price: Esko recommends, for credit account holders, a retail price that includes a minimum margin of 50% for the products contained within the customer's pricelist for Esko products.
6. Invoicing: Esko will issue one invoice per order. Unless otherwise agreed in writing by Esko, payment must be made to Esko no later than 20 days following the end of the month of invoice.
7. Overdue payments: If payment is not received in full by the due date, any unpaid amount will accrue default interest at the rate of 12% (twelve per cent) per annum from the date on which the payment was due until actual date of payment calculated on the balance owed at the end of each calendar month. Esko reserves all rights to recover the overdue amounts. Any costs incurred through action taken by Esko in the event of Customer default, including but not limited to debt collection costs and associated legal costs, will be paid by the Customer on an indemnity basis.
8. Freight: All prices exclude freight charges unless otherwise specified and advised in writing to the Customer. Esko reserves the right to charge an additional freight surcharge where urgent delivery is

- requested by the Customer (any applicable surcharge will be notified to the customer in advance). Delivery of the goods to the Customer is at the Customer's instructions and at its sole risk.
9. Risk: Any and all risk in the goods passes to the Customer ex Esko's works.
10. Customers' instructions: All instructions from the Customer to Esko in relation to an order must be in writing. Esko will not be responsible for errors or omissions occurring as a result of instructions being issued verbally.
11. Title: Title in any goods supplied by Esko passes to the Customer only when the Customer has made payment in full for all goods provided by Esko and of all other sums due to Esko by the Customer on any account whatsoever. Until all sums due to Esko by the Customer have been paid in full:
- a) Esko has a security interest in all goods.
  - b) The Customer shall not damage, alter or deface the goods but shall keep them in good order and repair.
  - c) The Customer shall not part with possession of the goods except with Esko's express written consent.
  - d) The Customer shall notify Esko within 24 hours if the goods are seized or taken out of the Customer's possession for any reason whatsoever, giving full particulars and the address (if known) to which the goods have been removed.
12. Security Interest:
- a) The Customer grants to Esko a personal property security interest in all goods supplied by Esko to the Customer (if any) at any time.
  - b) The Customer undertakes to:
    - i. Sign any further document and provide any further information which the Customer warrants to be complete, accurate and up-to-date in all respects, which Esko may reasonably require to register a financing statement or financing change statement on the New Zealand Personal Property Securities Register.
    - ii. Not register a financing change statement or a change demand without the prior written consent of Esko.
    - iii. Give Esko no less than fourteen (14) days written notice of any change of the Customer's name or other change in the Customer's details (including but not limited to changes in address, facsimile number, trading name or business practice).
    - iv. Indemnify Esko for any costs incurred by it in relation to the above.
    - v. Waive any rights to receive a copy of the verification statement under the Personal Property Securities Act 1999 (**PPSA**) and agrees to the extent permitted by law that under these Terms:
      1. The Customer will have no rights under (or by reference to) sections 114(1) or 133 of the PPSA.
      2. The provisions of Part 9 of the PPSA which are for the benefit of the Customer or place obligations on Esko will apply only to the extent that they are mandatory.
      3. Where Esko has rights under these Terms additional to those in Part 9 of the PPSA, those rights will continue to apply.

- c) In the event the Customer refuses to comply with its obligations under the above clause, then by signing this document the Customer grants to Esko power of attorney, solely for the purpose of signing all documents giving Esko a personal property security interest in the goods.
- d) If the goods are attached, fixed or incorporated into any property of the Customer, by way of any manufacturing or assembling process by the Customer or any third party, title in the goods shall remain with Esko until the Customer has made payment for all goods, and where those goods are mixed with other property so as to be part of or a constituent of any new products, title to these new products shall be deemed to be assigned to Esko as security for the full satisfaction by the Customer of the full amount owing between Esko and the Customer.
- e) The Customer gives irrevocable authority to Esko to enter any premises occupied by the Customer

or on which products are situated at any reasonable time after default by the Customer, or before default if Esko believes a default is likely, and to remove and repossess any goods and any other property to which goods are attached or in which goods are incorporated. Esko shall not be liable for any costs, damages, expenses or losses incurred by the Customer or third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless such liability cannot be excluded by law. Esko may either resell any repossessed goods and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed goods and credit the Customer's account with the invoice value less such sum as Esko reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.

13. No advice: The Customer expressly acknowledges and agrees that Esko (including its agents or employees) provides no representation or warranty in relation to the suitability for any purposes of goods or materials or services supplied by Esko and the Customer is responsible for making its own assessment. Esko disclaims any liability for any advice in relation to suitability of goods given by it or its agents or employees.
14. Force Majeure: Esko will not be liable to the Customer whatsoever for any defect, loss, damage or delay caused by strikes, lock-outs, damage to or breakdown of plant, government interference, earthquake, civil commotion, pandemic, epidemic or any other force majeure event beyond Esko's control.
15. Goods and Services Tax: Prices are exclusive of GST. The Customer will pay Goods and Services Tax at the applicable rate on every order.
16. Dimensions and Specifications: Dimensions and specifications contained or referred to in any order or in any publications maintained or issued by Esko are estimates only. Unless otherwise expressly agreed in writing by Esko, it is not a condition of any order that the goods will correspond precisely with such dimensions and specifications.
17. Warranties: Esko warrants that the products supplied will be manufactured without material fault. All other warranties, express or implied, are expressly excluded, but only to the extent permitted by law. Any claim for faulty manufacture must be made by the Customer to Esko within seven (7) days of the date of delivery to the Customer. Any goods which are the subject of a warranty claim must be returned to Esko's New Plymouth warehouse and all related freight charges are payable by the Customer.

18. Limitation of Liability:

- a) Esko will not be liable to the Customer for any indirect or consequential loss howsoever and whatsoever arising.
- b) Esko is not liable for any direct, incidental, indirect, special or consequential loss or damage claimed against the Customer by a third party, even if Esko should have known of the possibility of damage to that third party.

These limitations of liability only apply to the extent permitted by law.

19. Compliance: Any Council/Authority/Code etc., compliance and/or approval for any purchase, use, or maintenance of any goods ordered from Esko is the Customer's responsibility in all aspects.

20. Returns:

- a) The Customer should check contents of deliveries on arrival. Any claims for incorrect quantities or products must be notified to Esko within 7 days of delivery.
- b) Before returning goods, the Customer must obtain a Returns Authorisation Number from Esko Customer Services. No goods will be accepted for return without prior consent in writing.
- c) Returned goods must be accompanied by the Return Merchandise Authorisation form completed with the Returns Authorisation Number. Shipments without a Returns Authorisation Number will be treated as abandoned property and will not be processed.
- d) Returned goods must be in original condition and packaging. Stock rotation is the responsibility of the Customer and expired stock will not be accepted for return.
- e) Return costs may be payable by the Customer and may be subject to a re-stocking charge.

21. Intellectual Property:

- a) Esko is the owner of, or otherwise has the right to use, all copyright, trademarks and other intellectual property rights in connection with its business.
- b) This includes without limitation, all rights to, and any interests in, any patent, design, trade mark, copyright, know-how, trade secret and any other proprietary right or form of intellectual property, customer or supplier list, pricing and cost information, business and marketing material and proposals, agency agreement, purchase agreement, specification, formula, drawing, programme, design, system, process, business or domain name, image, video, text, logo, brand, mark, or style, whether protectable by registration or not.
- c) The supply of goods or services to the Customer does not constitute a transfer of any intellectual property rights in the goods or services of any part, except the right to use or re-sell the goods in the Customer's ordinary course of business.
- d) The Esko logo, the logos of Esko's sub-brands, product images, spec sheets, performance details, size charts, marketing material and any other content may only be used or re-published with Esko's written permission and only in connection with fair promotional representation of the relevant Esko products.
- e) The Customer shall not do anything inconsistent with or in infringement of such intellectual property rights.

22. Applicable Law: The Customer specifically warrants and represents to Esko that:

- a) All the goods and services that it acquires under this agreement are required for the purposes of a business in terms of sections 2 and 43(2) of the Consumer Guarantees Act 1993 and

accordingly the provisions of that Act do not apply to any supply of goods or services made pursuant to these Terms;

- b) Sections 9, 12A and 13 of the Fair Trading Act 1986 will not apply; and
- c) The provisions of the Part 3 of the Contract and Commercial Law Act 2017 will not apply.

23. Customer Information: In accordance with the Privacy Act 2020, the Customer authorises Esko to obtain such information as it may require in response to their enquiries from any source in order to determine the Customer's credit worthiness and to be used as a guide concerning credit limits. Esko will set a credit limit and reserves the right to alter the credit limit from time to time.
24. Amendments: These terms may be amended by Esko at any time. Any amendment will take effect on the next transaction following the date on which Esko notified the Customer of such change.
25. Dispute Resolution: Esko and the Customer will use all reasonable endeavours to resolve any dispute between them. If they cannot resolve their dispute between them, they will:
- a) Refer the dispute to mediation which will be conducted in accordance with the Resolution Institute New Zealand Standard Mediation Agreement; and
  - b) If mediation is unsuccessful, the matter of dispute shall be referred to a single arbitrator in accordance with the provisions contained in the Arbitration Act 1996 and any amendments. Nothing in this clause will preclude either party from taking immediate steps to seek urgent equitable relief before an appropriate Court.
26. Termination:
- a) Esko is, in its sole discretion, entitled to terminate on written notice with immediate effect any credit arrangement with the Customer and thereafter to supply goods on a cash sale basis only.
  - b) Where the Customer has not purchased goods from Esko for a continuous period of three months, Esko may at its discretion terminate the Customer's account with immediate effect.
- Any termination or expiry of these Terms is without prejudice to any rights and remedies of Esko accrued up to the end of the time of termination or expiry.
27. Severability: If any part of these Terms is found to be unenforceable, it will be deemed to be severed from the remainder of the Terms to the extent of its unenforceability but the remainder of the Terms will remain in full force and effect.
28. Variation: These Terms may only be varied with the prior written agreement of Esko.
29. Other terms: Esko's Terms are the only terms that apply to the Customer's order. Any other terms and conditions stated in the Customer's order forms, delivery receipts, online ordering system, invoices or elsewhere do not apply.
30. Assignment: Customer may only assign these Terms with Esko's prior written consent.
31. Relationship: nothing in or done in connection with these Terms creates any relationship of employment, partnership, joint venture, or agency between Esko and Customer.
32. Survival: clauses 7, 9, 11, 12, 13, 14, 15, 17, 20, 24, 25, 26, 27, 28, 29, 30, 31 and 31 of these Terms survive termination or expiry, along with any other clauses that expressly or by their nature survive termination or expiry.